

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 FEA-01 ERDA-05 AID-05 CEA-01 CIAE-00

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INT-05 L-03 NSAE-00 NSC-05 OMB-01 PM-04 USIA-06

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E.O. 11652: N/A

TAGS: ENRG, SENV, PGOV, CA

SUBJECT: BERGER COMMISSION STAFF ISSUES REPORT

1. OCTOBER 30 CANADA PRESS ITEM STATES THAT BERGER COMMISSION STAFF HAS ISSUED AN 800-PAGE DRAFT REPORT ON POTENTIAL IMPACT OF A MACKENZIE VALLEY PIPELINE. ACCORDING TO NEWS ITEM, THE REPORT CONTAINS FOLLOWING MAIN FINDINGS AND RECOMMENDATIONS:

A. NATIVE INTERESTS WOULD BE PREJUDICED IF PIPELINE IS CONSTRUCTED BEFORE A CLAIMS SETTLEMENT, AT THE SAME TIME IT IS BEING NEGOTIATED, OR FOR A PERIOD OF 10-15 YEARS AFTER AGREEMENT IS REACHED. DELAY WOULD BE NEEDED TO SET UP INSTITUTIONS AND STRUCTURES "WHICH WILL GUARANTEE THE NATIVE PEOPLE OF THE NORTH A SECURE POLITICAL, SOCIAL AND ECONOMIC BASE ON WHICH TO FACE THE FUTURE."

B. IT RECOMMENDS THAT CANADIAN ARTIC GAS PIPELINE LTD. CHANGE ITS PRESENTLY PROPOSED ROUTE ACROSS THE NORTHERN YUKON TO THE MACKENZIE DELTA AND ALONG THE MACKENZIE VALLEY. REPORT STATES THAT AN ALTERNATE ROUTE FROM PRUDHOE BAY TO FAIRBANKS THENCE ALONG ALCAN HIGHWAY OFFERS "ENVIRONMENTAL ADVANTAGES."
(NOTE: THIS IS THE PROPOSED ROUTE OF THE ALCAN PROJECT.)

C. IT RECOMMENDS THAT THE CANADIAN GOVERNMENT SET UP A
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SPECIAL AGENCY TO OVERSEE CONSTRUCTION AND OPERATION OF THE

PIPELINE AND TO MONITOR ITS EFFECTS IN THE NORTH.

2. REPORT NOTES THAT RECOMMENDATIONS ARE NOT BINDING ON JUSTICE BERGER AND HE IS FREE TO REJECT ANY OF THEM.

3. DOCUMENT WAS RELEASED TO GIVE GROUPS PARTICIPATING IN THE INQUIRY A CHANCE TO REPLY BEFORE HEARINGS ARE CLOSED NOVEMBER 19.

4. NOVEMBER 3 "GLOBE AND MAIL" EDITORIAL SAID: "THE STAFF REPORT WAS WRITTEN HASTILY, AND AS A RESULT IS LONG, PONDEROUS AND TENDS, EVEN AFTER PRESENTING OPINIONS, TO SKIRT AROUND THEM."

5. COMMENT: BERGER TOLD AMBASSADOR RECENTLY THAT IN MAKING STAFF REPORT PUBLIC -- A DEPARTURE FROM STANDARD PROCEDURE IN CANADA -- HE WAS ADOPTING PRACTICE FOLLOWED UNDER ADMINISTRATIVE LAW PROCEDURES BY U.S. REGULATORY BODIES. OBJECTIVE IS TO PROVIDE INTERESTED PARTIES WITH BACKGROUND SO THAT THEY WILL HAVE BETTER UNDERSTANDING OF BERGER'S EVENTUAL POSITION. BERGER EMPHASIZED THAT HE DID NOT CONSIDER HIMSELF BOUND IN ANY WAY BY STAFF CONCLUSIONS AND RECOMMENDATION.

6. IN RESPONSE TO EMBOFF'S QUESTIONS, ENERGY MINES AND RESOURCES ASS'T DEPUTY MINISTER DIGBY HUNT CAUTIONED THAT:

A. REPORT REFLECTS ONLY VIEWS OF COMMISSION'S COUNSEL AND HIS STAFF.

B. COUNSEL AND STAFF ARE PROBABLY PLAYING A CONSCIOUS DEVIL'S ADVOCATE ROLE; THEIR POSITION THUS TENDS TO BE AN EXTREME ONE.

C. BERGER'S OWN FINDINGS ARE APT TO BE MORE BALANCED, BUT HE WILL PROBABLY SUPPORT THE SUBSTANCE OF THE REPORT.

D. EVEN IF BERGER COMES OUT AGAINST CONSTRUCTION OF A PIPELINE NOW, THE CANADIAN GOVERNMENT IS IN NO WAY BOUND BY HIS DECISION.

7. COMMENT: ASSERTIONS THAT BERGER IS NOT BOUND BY STAFF FINDINGS AND THAT IN ANY EVENT, GOC IS NOT BOUND BY EVENTUAL BERGER DECISION EITHER ARE TECHNICALLY CORRECT. HOWEVER, PUBLICATION OF REPORT OF THIS NATURE CERTAINLY WILL NOT MAKE LIMITED OFFICIAL USE

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IT ANY EASIER FOR GOC TO COME TO EARLY POSITIVE DECISION ON PIPELINE ROUTE.

8. ONLY A LIMITED NUMBER OF COPIES (35) OF THIS "SEMI-PUBLIC" DOCUMENT HAVE BEEN PRINTED. INTERESTED CANADIAN GOVERNMENT AGENCIES ARE NOW IN PROCESS OF PRINTING AND DISTRIBUTING ADDITIONAL COPIES. EMBASSY DOES NOT HAVE COMPLETE DOCUMENT YET. WE WILL CABLE FURTHER COMMENT AND POUCH DOCUMENT WHEN

AVAILABLE.
ENDERS

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